United States Department of Labor
Employees' Compensation Appeals Board

WILLIAM BUSH, Appellant	)	
and	)	**Docket No. 05-698**
	)	**Issued: July 5, 2005**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Austin, TX, Employer	)	

Appearances:
William Bush, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On January 31, 2005 appellant timely filed an appeal from a November 22, 2004 decision by the Office of Workers' Compensation Programs, which found that appellant's request for hearing was untimely and therefore denied his request for a hearing. In an August 16, 1994 decision, the Office found that appellant had not established that he sustained an injury within the meaning of the Federal Employees' Compensation Act. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury in the performance of his duty; and (2) whether the Office properly denied appellant's request for a hearing.

FACTUAL HISTORY

On June 19, 2004 appellant, then a 38-year-old mail handler, was pulling post containers and equipment out of four or five trailers that were completely full when he developed pain in

both feet. In a July 2, 2004 notice, the employing establishment informed appellant of the need to submit medical evidence in support of his claim for compensation. Appellant submitted handwritten medical notes, including notes from May 2004 and a March 15, 2004 note from Dr. K. Stephenson, who indicated that appellant was postlumbar fusion surgery. In a note dated June 21, 2004, Dr. Jeff Lamour, a podiatrist, stated that appellant had toe/heel pain and would return to work on June 21, 2004.

In an August 16, 2004 decision, the Office denied appellant's request for compensation on the ground that, while he proved the incident did occur, he did not submit any medical evidence that provided a diagnosis of a condition which could be connected to the event.

In a September 16, 2004 form letter, appellant requested a hearing before an Office hearing representative. In a November 22, 2004 decision, the Office denied appellant's request for reconsideration as untimely. The Office reviewed the case under its own discretion and found that the issue in the case could be equally well addressed submitting new evidence and requesting reconsideration.

LEGAL PRECEDENT -- ISSUE 1

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[1] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[2] A claimant seeking benefits under the Act[3] has the burden of establishing by reliable, probative and substantial evidence that any disability for work or specific condition for which compensation in claimed is causally related to the employment injury.[4] To establish causal relationship between a condition, including any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5] Neither the fact that the condition manifests itself during a period of federal employment nor the belief of the claimant that factors of

[1] *Louise F. Garnett*, 47 ECAB 168, 170 (1995).

[2] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *See Frazier V. Nichol*, 37 ECAB 528 (1986).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Daniel M. Ibarra*, 48 ECAB 218, 219 (1996).

employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.[6]

ANALYSIS -- ISSUE 1

Appellant reported that he was injured on June 19, 2004 when he was emptying the contents of four to five fully packed trailers. The Office did not dispute that appellant had an incident at the time, place and in the manner alleged. However, appellant failed to submit any medical evidence in support of his claim that showed his work that day caused a foot injury. The only medical evidence which pertained to a medical evaluation after June 19, 2004, was the form note from Dr. Lamour, who noted that appellant had toe/heel pain, but did not provide a diagnosis of appellant's condition. Furthermore, Dr. Lamour provided no history of injury and provided no opinion regarding the cause of appellant's condition. Dr. Lamour's report lacks probative value as it does not provide a rationalized medical opinion that appellant sustained an injury on June 19, 2004.

The only other medical evidence of record were notes that were dated before the June 19, 2004 employment injury. Appellant did not submit a report from a physician that gave a history of the injury, the results of examination and tests, a diagnosis of the condition and a detailed explanation from the physician describing how the employment injury caused pain in his feet. Appellant has therefore not established that he sustained an injury caused by the employment incident.

LEGAL PRECEDENT -- ISSUE 2

In determining the timeliness of a request for a hearing before an Office hearing representative, the hearing request must be filed within 30 days of the date of the Office's final decision.[7] In computing a time period, the date of the event from which the designated period of time begins to run shall not be included, while the last day of the period so computed shall be included unless it is a Saturday, Sunday or holiday.[8]

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing; when the request is made after the 30-day period established for requesting a hearing; or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.

[6] 20 C.F.R. § 10.115(e).

[7] 5 U.S.C. § 8124(b)(1).

[8] *Afegalai L. Boone*, 53 ECAB 533, 536-37 (2002)

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[9]

ANALYSIS -- ISSUE 2

Appellant's request for an oral hearing before an Office hearing representative was dated September 16, 2004. However, because August has 31 days, the request for a hearing was due on September 15, 2004. Therefore, appellant was one day late in requesting a hearing before an Office hearing representative.

The Office considered the issue of whether to exercise its discretion to grant a hearing that was barred by the time limits. The Office reviewed the case and decided that appellant could receive full consideration of his case by requesting reconsideration and submitting new evidence on whether appellant's work on June 19, 2004 caused his injury. There is no evidence that the Office abused its discretion in this case.

CONCLUSION

Appellant has not met his burden of proof in establishing that his work on June 19, 2004 caused the pain in his feet. Appellant also failed to timely request a hearing before an Office hearing representative. The Office did not abuse its discretion in denying appellant's request for a hearing.

[9] *Cleo R. Hatch*, 49 ECAB 636 (1998).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 22 and August 16, 2004 are hereby affirmed.

Issued: July 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member